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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

BRETT CUEVA et al.,	
Plaintiffs and Respondents,	G055357
v.	(Super. Ct. No. 30-2008-00111817)
PERRY JOHNSON,	O P I N I O N
Defendant and Appellant.	

Appeal from an order of the Superior Court of Orange County, Robert J. Moss, Judge. Affirmed.

Perry Johnson, in pro. per.; Law Office of Stefanie N. West and Stefanie N. West for Defendant and Appellant.

Law Offices of Stuart A. Katz and Stuart A. Katz for Plaintiffs and Respondents.

INTRODUCTION

Perry Johnson appeals from a postjudgment order denying his motion to compel entry of an acknowledgement of satisfaction of judgment pursuant to Code of Civil Procedure section 724.050.[1] He first claimed he satisfied the judgment entered in 2010 against him and in favor of respondents Brett Cueva and Thuan Nguyen. Johnson now maintains that Cueva and Nguyen "tacitly" agreed to accept less than the full amount of the judgment, so he owed them no more money. He also claims he assigned two promissory notes to them, the face value of which exceeded the judgment. This is another reason he owes respondents no more money.

We affirm the order denying the motion. Johnson presented no evidence of any agreement, tacit or otherwise, to accept less than the full amount of the judgment. The evidence presented to the court showed that while one promissory note was assigned to respondents, they collected only a small fraction of the amount of the judgment before the borrower went out of business and ceased paying. There is no basis for the relief he sought.

FACTS

The judgment that is the subject of this appeal was entered against Johnson in 2010, following a jury trial. Cueva and Nguyen sued Johnson after two Fatburger franchises they had purchased from him turned out to be far less profitable than he had represented. The jury found that Johnson had defrauded Cueva and Nguyen, causing them to buy the franchises by misrepresenting their profitability. The jury awarded a total of over $567,000. Johnson appealed, and we affirmed the judgment.[2]

Cueva and Nguyen then set about trying to collect the judgment. They realized $23,000 from the sale of Johnson's real property in Dove Canyon. During a judgment debtor examination, they learned of a promissory note in Johnson's favor in the

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[1] All further statutory references are to the Code of Civil Procedure.

[2] *Cueva v. Johnson* (May 20, 2011, G043539) [nonpub. opn.].

amount of $385,000. They obtained an assignment order for the rights to payment for this note, dated December 31, 2008, but the borrower went out of business after paying only $36,000. Between June 2013 and April 2017, they filed and served six memoranda of costs after judgment, specifying each time how much had been collected on the judgment. The amount never exceeded $59,135.

Johnson attached a copy of another note, dated September 3, 2008, as an exhibit to his motion, but respondents' counsel stated Johnson had not disclosed the existence of this note before filing the motion and respondents had collected nothing from it. There is no assignment order for the September 2008 note in the record.

The total collected on the judgment was a little over $59,000. As of April 2017, the total amount still owing, including more than seven years' worth of interest, was close to $1 million, so the court denied the motion.

DISCUSSION

We review an order deciding a motion for satisfaction of judgment for substantial evidence, assuming the order's correctness. (*Jhaveri v. Teitelbaum* (2009) 176 Cal.App.4th 740, 748.) As the appellant, Johnson must demonstrate that there is no substantial evidence to support the court's findings. (See *id.* at p. 749.)

Section 724.010 provides, in pertinent part, "(a) A money judgment may be satisfied by payment of the full amount required to satisfy the judgment or by acceptance by the judgment creditor of a lesser sum in full satisfaction of the judgment." Section 724.050, subdivision (a), provides, "If a money judgment has been satisfied, the judgment debtor . . . may serve personally or by mail on the judgment creditor a demand in writing that the judgment creditor do one or both of the following: [¶] (1) File an acknowledgment of satisfaction of judgment with the court. [¶] (2) Execute, acknowledge, and deliver an acknowledgment of satisfaction of judgment to the person who made the demand." Section 724.050, subdivision (d), provides, "If the judgment creditor does not comply with the demand within the time allowed, the person making the

demand may apply to the court on noticed motion for an order requiring the judgment creditor to comply with the demand. . . . If the court determines that the judgment has been satisfied and that the judgment creditor has not complied with the demand, the court shall either (1) order the judgment creditor to comply with the demand or (2) order the court clerk to enter satisfaction of the judgment."

A motion for acknowledgement of a full satisfaction of a judgment made under section 724.050 is an all-or-nothing motion. Either the judgment debtor has fully satisfied the judgment, or he has not.[3] (*Comerica Bank v. Runyon* (2017) 16 Cal.App.5th 473, 481.)

On appeal, Johnson makes two arguments. First, he asserts that respondents "tacitly" agreed to accept less than the full amount of the judgment.[4] His argument on this issue is somewhat difficult to follow. He seems to assert that assigning the two promissory notes, whose total face value was *more* than the judgment, constituted a tacit agreement by respondents to accept *less* than the full amount of the judgment.

Nothing in the record supports a tacit agreement by respondents to do anything. According to the evidence, when they found out about one note, through the judgment debtor examination, they obtained an assignment order that netted them $36,000. Nothing in the record shows they obtained an assignment order for the second note, the existence of which, their counsel stated, was news to them.

If we have understood Johnson's argument correctly, he maintains he satisfied the judgment merely by assigning the promissory notes to respondents. (He ignores the evidence that the second note was never assigned, or even disclosed.) If the borrower defaulted, that was just respondents' bad luck. They, not Johnson, had to chase him down for payment.

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[3] Section 724.110 provides a process for obtaining a partial satisfaction of judgment. A partial satisfaction cuts off any further interest on that portion of the judgment. (§ 685.030, subd. (c).)

[4] Johnson did not make the "tacit agreement" argument in the superior court.

In fact, Johnson could have enforced the promissory notes himself by suing the borrowers and joining Cueva and Nguyen as necessary parties. (See *Space Properties, Inc. v. Tool Research Co.* (1962) 203 Cal.App.2d 819, 828-829; *Graham v. Light* (1906) 4 Cal.App. 400, 402-403.) He received repeated notices from Cueva and Nguyen between 2013 and 2017 that collection efforts were stalled.

Johnson provides no authority for the idea that a judgment debtor satisfies a judgment merely by means of a court order assigning the payment right to a promissory note to the judgment creditor. Or that an assignment order transfers the obligation to satisfy the judgment to the person liable on the note. Nothing in the Code of Civil Procedure permits a judgment debtor to fob his debt off onto someone else without some strong evidence that the creditor agreed to the change. As section 724.010, subdivision (a), provides, a money judgment is satisfied by "payment of the full amount required." There is *no* evidence in the record that respondents ever agreed the assignment order for the December 2008 note completely satisfied the judgment.

Johnson's second argument is a variant of his don't-look-to-me argument: because the face value of the two notes exceeded the amount of the judgment, it was paid off in full. As the court pointed out, the face value of the notes is meaningless. What matters is how much the judgment creditors actually collected. According to the evidence, respondents collected a total of $36,000 on the one note they knew about. This amount barely made a dent in the interest, let alone the principal. The court stated, "Judgment debtor is not entitled to an acknowledgement of satisfaction of judgment until the judgment has been paid in full." As section 724.010, subdivisions (b) and (c), make

clear, "paid in full" means the creditor has actually received money or property satisfying the judgment, not a potential recovery in the future.[5]

DISPOSITION

The order denying the motion for satisfaction of judgment is affirmed. Respondents are to recover their costs on appeal.

BEDSWORTH, J.

WE CONCUR:

O'LEARY, P. J.

ARONSON, J.

[5] Section 724.010, subdivisions (b) and (c), provide: "(b) Where a money judgment is satisfied by levy, the obligation of the judgment creditor to give or file an acknowledgment of satisfaction arises only when the judgment creditor has received the full amount required to satisfy the judgment from the levying officer. [¶] (c) Where a money judgment is satisfied by payment to the judgment creditor by check or other form of noncash payment that is to be honored upon presentation by the judgment creditor for payment, the obligation of the judgment creditor to give or file an acknowledgment of satisfaction of judgment arises only when the check or other form of noncash payment has actually been honored upon presentation for payment."